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CIVIL AND POLITICAL RIGHTS

Written statement* submitted by the International Federation for Human Rights (FIDH), a non-governmental organization in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[25 January 2002]

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*/ This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

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Human Rights and the fight against terrorism

The FIDH strongly condemns every acts of international terrorism. The attacks perpetrated against civilian populations cannot find one justification and their authors must be brought before justice, strictly respecting the international provisions relating to the protection of human rights.

Thus, the FIDH welcomes the efforts undertaken by the international community in its will to find a proper co-operation between States in order to prevent and supress this phenomenon. To this end, the works of the Human Rights Commission, notably the progress report prepared by Ms Kalliopi K. Koufa and presented during the 53th session of the Sub-Commission of Human Rights, give a supplementary contribution to the fight against international terrorism under the prism of the respect of fundamental rights of the individual.

Facing terrorist attacks, the exigencies of law must prevail on the attempt of revenge. However, this duty of justice cannot undermine human rights international provisions otherwise it would legitimise those who are in favour of arbitrary systems.

Considering the political nature of the terrorist attacks, no international Conventions that came into force defines the crime of international terrorism. The approach has therefore been sector-based, aiming at isolating certain acts of terrorism such as the taking of hostages or terrorist bombings and encouraging contracting States to embody such offences in their internal law.

Considering that terrorism is not as such a separate offence in the international field, States have full responsibility for legally qualifying and punishing acts of terrorism. This often have pernicious effects, in that the responsibility can be used by the authorities to restrict public liberties.

Too often, States take advantage of the horror of the crime of terrorism in order to provide themselves with a whole array of legal instruments for suppressing any form of political protest. However, "rebellion against tyranny and oppression" is a fundamental right guaranteed by the 1948 Universal Declaration of Human Rights.

In the contrary, most of national definitions only refer to international terrorism, avoiding the suppression of State terrorism. And, instead of the rule of law, the nature of terrorist acts often gives right to political considerations consecrating impunity of investigation and judgement. Such impunity can also exist because of the author of the terrorist act himself, if he is supported and encouraged by the State itself.

Dispensing justice for terrorist acts is also problematic. The States are implementing exceptional judicial proceedings to try presumed terrorist individuals. The suspects are deprived of appropriate defense, the evidence supporting the charges remain secret, justice is given by exceptional or military courts (which working and composition undermine basic principles of equity), death penalty can be sentenced. These proceedings stand in obvious violation of international standards that guarantee the right to a fair trial, such as the International Covenant on Civil and Political Rights. Letting the governments act on the field of summary justice contradicts the vital respect of human rights. Some governments will use the particular context of the fight against terrorism to legitimate the settling of certain emergency situations.

To get out of this domestic problematic, the FIDH recalls that the Statute of the future International Criminal Court introduces objective norms, along with judicial proceedings that are neutral and respect the right of the defense, that may prove useful in the fight against international terrorism. Though the States decided that the crime of terrorism did not come

under the jurisdiction of the Court, the Final Act of the Rome Statute "recommends that a Review Conference pursuant to article 123 of the Statute of the International Criminal Court considers the crimes of terrorism with a view to arriving at an acceptable definition and its inclusion in the list of crimes within the jurisdiction of the Court". Besides, from the moment of its implementation, the Court will be able to examine acts of terrorism that fall under the qualification of genocide, crimes against humanity or war crimes, since those crimes come under the Court's jurisdiction.

Finally, the FIDH expresses its deep concern regarding the repressive attitude of the governments that use the fallacious pretext of the fight against terrorism to pass acts that violate fundamental freedoms. If most States can legitimately strengthen their mechanisms to guarantee the right to security, this may result in breaches to collective and individual freedoms that have no legitimacy. Indeed, restrictions to fundamental freedoms are exceptionally allowed by international law, but only under very strict conditions. Only can their scrupulous respect enable us to avoid arbitrariness. Yet, there are more and more breaches to human rights, freedom of the press and freedom of information on the Internet. The FIDH particularly regrets the arrests and the provisional detentions, without any evidence being demanded, press censorship and other serious obstacles to public freedoms.

However, these periods of security troubles are precisely the moments when it is necessary to fight for the application of civil and political freedoms. History teaches us that the moments of hysteria, war or instability are times when no new laws should be promulgated when they restrict liberties and give even greater powers to the State and its repressive bodies. In the fight against terror, law should not forget its essence. Opportunism and haste must give way to a pertinent reaction.

Recommendations :

1. The FIDH emphases the importance for States to work together in the prevention and suppression of acts of terrorism, in particular through increased co-operation, the ratification and the full application of the international and regional conventions on terrorism.

2. The FIDH recommends that the effective implementation of these instruments in the internal law of the States, including through the principle of universal jurisdiction, must take place in the essential framework of respect for human rights.

3. The FIDH specify that the draft international and regional conventions on the definition of the terrorist crime must

   - take into account the various authors of acts of terrorism (individual, group, State);

   - avoid the pitfall of excessively broad coverage, which could in reality hinder individual and collective liberties or which could include such risk.

4. The FIDH recalls that being explicitly excluded from the Statute of Rome, the crime of terrorism must under no pretext be included into the Court jurisdiction except if the States parties decide to do so at the review conference due to be held seven years after the coming into force of the ICC. Any attempt to reopen the Statute would seriously undermine the integrity of the Statute, and would bring into question the legal and political balance of the Court, and would jeopardize its early coming into force.

5. The FIDH asserts that certain acts of terrorism could, under very specified conditions set up in the ICC Statute, be considered as being acts under the jurisdiction of the Court. In

particular, the intentional act of terrorism (characterized by murder, persecution or other inhuman acts), isolated or not, on a large scale or planned, directed against the civilian population, in application of a general policy on the part of a State or an organization, could be qualified as a crime against humanity under Article 7 of the ICC Statute. However, the preparatory works of the Rome Statute and case law of the international criminal tribunals should lead us on the contrary to err on the side of caution. Anyway, such qualification is, in fine, at the burden of the independent organs of the Court specified in the Statute, that is to say the Prosecutor, and the Court itself.

6. The FIDH recalls that, in the context of the fight against terrorism, eventual exceptional measures taken by the States must strictly be limited by international provisions to fully respect human rights law.